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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

MAR - 1 1995  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Amendment of Part 90 of the	)	PR Docket No. 93-144
Commission's Rules to Facilitate Future	)	RM-8117, RM-8030
Development of SMR Systems in the	)	RM-8029
800 MHz Frequency Band	)	
	)	
and	)	
	)	
Implementation of Section 309(j) of the	)	PP Docket No. 93-253
Communications Act - Competitive	)	
Bidding	)	
800 MHz SMR	)	

To: The Commission

REPLY COMMENTS

James A. Kay, Jr. (Kay) hereby replies in the above captioned rule making and states his strong opposition to MTA based licensing, forced frequency relocation, and auctions of SMR spectrum. None of these proposals will reap any benefit for the public or existing operators; and each will result in chaos and devastation without any resulting promise of a new, accepted telecommunications service.

Frequency Swapping Is Not Feasible

Kay opposes forced frequency swapping for the same reasons that such opposition has been voiced by many commenting parties, see, e.g. Comments of SMR Won. This proposal suggests that such trading of spectrum is possible and desirable. It is neither. Instead, the premise that adequate, suitable spectrum exists has not and cannot be proven

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by any commenting party. For example, Nextel has stated that such swapping occur, but has provided no factual support for its contention that might demonstrate that such activity is possible. It is apparent to all analog operators that such activity would be horrible for each's business, including down time, equipment changes, re-engineering, redrafting of site leases, and adverse impacts on the good will of each burdened operator. It should not escape the Commission's notice that Nextel has also not shown how it would pay for the enormous costs associated with such a plan. The Commission must remember that the proposal cannot be adopted with the idea that the entire matter can be accomplished with a pocketful of crystals and a hearty "good luck."

For these reasons, Kay must strongly object to this proposal and implores the Commission to reject this proposal as the cornerstone to the disastrous tomorrow envisioned in Nextel's comments -- a future wherein a single operator exists in each of the top fifty major markets and where competition is so reduced as to be almost nonexistent. That lack of competition would first be fully demonstrated at the proposed auctions, where the Commission would enjoy the company of a single bidder, Nextel, for almost all of the MTA licenses.

#### Small Business Would Suffer from Auctions

For many of the same reasons outlined above, Kay strongly opposes the auctioning of SMR spectrum. Again, the yardstick for regulation behind this proposal is the depth of pocket rather than the depth of commitment. Analog operators who have

steadfastly sold service to the public for years, but who have not sold stock to that same public, are at an unfair disadvantage. Small business suffers for concentrating on fulfilling its duty as Commission licensees, rather than focusing its attention on mega-mergers, stock sales, leveraged buy-outs and the like. At present, the regulations base the acquisition of additional spectrum on the past performance of the operator in increasing its offerings of service. Under the Nextel proposal, the matter is not based on the provision of service, but it is instead based on considerations of equity, which have nothing to do with fundamental fairness.

If the Commission had a legitimate complaint about the manner in which spectrum has been allocated to analog operators, this proposal might have some credence. But such a complaint is without basis. Abuses of the Commission's licensing methods have not been the result of actions taken by analog operators, but rather by boiler room operations which have no connection to legitimate analog operations. Kay applauds any efforts taken by the Commission to remove the taint on the industry and the Commission's processes caused by such persons. However, Kay strongly opposes any efforts which are an attempt to solve the problem by penalizing the analog operators, to the singular benefit of Nextel.

If Nextel is sincere in its desire to obtain spectrum via purchasing methods such as paying the Commission for certain advantages, why not simply direct Nextel toward the market and invite it to engage in arms length negotiations with analog operators? In

this manner, analog operators would, at least, be presented with fair offers. Nextel's efforts in this proceeding are an obvious attempt to avoid the bargaining table and the costs associated therewith. Instead, Nextel would have the Commission give them assets at devalued prices which have no basis in the market. The Commission should quickly reject Nextel's attempts to abuse the Commission and its authority in this manner. The Commission should not be used like a gun pointed at the head of legitimate operators, with an "or else" tone.

#### Promoting Competition

None of the proposals put forth can logically be found to be an encouragement of competition in the marketplace and none of Nextel's justifications within its comments support such a finding. Accordingly, if the Commission is motivated by an attempt to increase competition in the telecommunications marketplace, the Commission should summarily reject these proposals as fully anticompetitive. As further illustration, the following is noted:

1. The Nextel proposal advocates a single operator in each of the top fifty major markets which would hold up to 200 channels of SMR spectrum. The concentration of this level of SMR spectrum within the possession of a single licensee, employing automatic methods of grant by fiat, cannot be found to be a promotion of competition.

2. The Nextel comments support MTA-wide licensing of the above-mentioned spectrum, which would curtail, if not terminate, the growth of all analog SMR systems within market areas. Accordingly, competition from these sources would be greatly reduced.

3. Nextel suggests that its proposals will provide for alternative technologies which will provide competing services to the market. However, Nextel's sole supplier of technology and major stockholder is Motorola, which will be the sole source of technology for over seventy percent of the SMR marketplace if the proposals are adopted. It stretches credulity to propose, much less accept, that such a market situation will encourage competitive services. In fact, such an environment will be detrimental to the other equipment suppliers and will discourage their participation in bringing new technological services to the market.

4. It requires little imagination to envision the numerous auctions wherein Nextel would be the single bidder. The blocks would be of little use to anyone else, given Nextel's market dominance. Accordingly, the Commission may not expect to find a competitive environment at its proposed auctions.

5. Nextel's comments continue to suggest that ESMR services will compete with cellular, even though this position has been disavowed by Nextel in the

press. It has become apparent that these promises of competitive services were greatly exaggerated and the illusion of such competition should not provide a basis for Commission action herein.

6. The adoption of forced frequency swapping will so chill and preoccupy analog operators as to set back growth efforts and increased service offerings for years. Therefore, even a robust operator who participates vigorously in local competition will require many months to recover from adoption of this proposal, thereby greatly reducing each operator's ability to compete in the marketplace.

It is, therefore, incumbent on the Commission to honestly conclude that adoption of the proposals will not enhance competition. The contrary is obviously and painfully true. For these reasons, the Commission should simply reject the proposals and maintain the equal playing field that exists in the market today, albeit with the formidable advantages already enjoyed by Nextel. Granting greater advantages to Nextel will not promote competition. It will merely promote an increasing perception of callousness for the rights and requirements of the smallest operators in the industry.

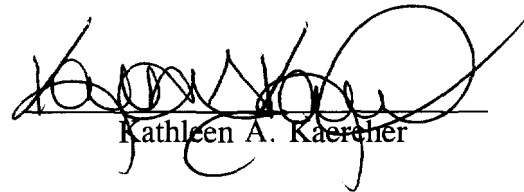
### Conclusion

For the reasons stated herein, Kay opposes the proposals contained within the Further Notice of Proposed Rule Making and respectfully requests that they be

summarily rejected as detrimental to the interests of analog SMR operators and the consuming public.

Respectfully submitted,  
JAMES A. KAY, Jr.

By

A handwritten signature in black ink, appearing to read 'Kathleen A. Kaercher', written over a horizontal line.

Brown and Schwaninger  
Suite 650  
1835 K Street, N.W.  
Washington, D.C. 20006  
202/223-8837

Dated: March 1, 1995

## CERTIFICATE OF SERVICE

I hereby certify that on this first day of March, 1995, I served a copy of the foregoing Reply Comments on the following by placing a copy in the United States Mail, first class postage prepaid:

Gardner, Carton & Douglas  
1301 K Street, N.W.  
Suite 900, East Tower  
Washington, D.C. 20005

Counsel for:  
Pittencrief Communications, Inc.  
E.F. Johnson Company  
Gulf Coast Radio Fone  
Deck Communications, Inc.  
Nodak Communications  
Wiztronics, Inc.  
Raserco, Inc.  
Vantek Communication, Inc.  
Southern Minnesota Communications  
Brandon Communications, Inc.  
Dakota Electronics  
Bis-Man Mobile Phone, Inc.  
Rayfield Communications  
B & C Communications  
Radio Communications Center  
Keller Communication, Inc.  
Don Clark Radio Communications  
Pro-Tec Mobile Communications  
Automated Business Communication  
Morris Communications  
Nielson Communications  
E.T. Communications Company  
Bolin Communications System  
Diamond "L" Industries, Inc.

Mark J. Golden  
Meyer, Faller, Weisman & Rosenberg, P.C.  
4400 Jennifer Street, NW  
Suite 300  
Washington, DC 20015

Counsel for:  
Personal Communications I

Young & Jatlow  
2300 N Street, N.W.  
Suite 600  
Washington, D.C. 20037

Counsel for:  
Ericsson Corporation

Lukas, McGowan, Nace & Gutierrez  
1111 19th Street, N.W.  
Washington, D.C. 20036

Counsel for:  
Fisher Communications, Inc.  
American Mobile Telecommunications Assoc.

Motorola, Inc.  
1350 Eye Street, N.W.  
Suite 400  
Washington, D.C. 20005

Wiley Rein & Fielding  
1776 K Street, NW  
Washington, DC 20006

Counsel for:  
Robert J. Butler

Kelly & Povich, P.C.  
1101 30th St., N.W.  
Suite 300  
Washington, D.C. 20007

Counsel for:  
Advanced Mobilecomm, Inc.

Mintz, Levin, Cohn, Ferris, Glovsky, &  
Popeo, P.C.  
701 Pennsylvania Ave., N.W.  
Washington, D.C. 20004

Counsel for:  
McCaw Cellular Communications, Inc.

Blooston, Mordkofsky, Jackson & Dickens  
2120 L Street, NW  
Suite 300  
Washington, DC 20554

Counsel for:  
The SMR Small Business Coalition

William R. Miller  
Russ Miller Rental  
3620 Byers Avenue  
Fortworth, Texas 76107

Joel Freedman  
Vice President, General Counsel  
Dial Call Communications  
1355 Peachtree Street, Suite 755  
Atlanta, GA 30309



Mark Lindquist  
Communications Center, Inc.  
Box 1034  
Pierre, SD 57501

John D. Pellegrin  
1140 Connecticut Avenue, N.W.  
Suite 606  
Washington, DC 20036

Counsel for:  
American SMR Company

Duncan C. Kennedy  
Genesee Business Radio  
992 Cater Street  
Rochester, NY 14621-1910

Meyer, Faller, Weisman  
& Rosenberg, P.C.  
Allan S. Tilles  
4400 Jenifer Street, NW  
Suite 380  
Washington, DC 20015

Counsel for:  
Parkinson Electronics

Ross & Hardies  
888 16th Street, NW  
Suite 400  
Washington, DC 20006

Counsel for:  
SMR Won

Fisher, Wayland, Cooper,  
Leader & Zargoza, L.L.P.  
2001 Pennsylvania Avenue, N.W.  
Suite 400  
Washington, DC 20006

Keller & Heckman  
1001 G Street, NW  
Suite 500 West  
Washington, DC 20001

Counsel for:  
The Southern Company  
DCL Associates  
American Petroleum Institute  
US Sugar Corporation

Lewis H. Goldman  
1850 M Street  
Suite 1080  
Washington, DC 20036

Counsel for:  
Douglas L. Bradley

McCaw Cellular Communications, Inc.  
1150 Connecticut Avenue, NW  
Washington, DC 20036

Bryan Cave  
700 Thirteenth Street, NW  
Suite 700  
Washington, DC 2005-3960

Counsel for:  
CenCall, Inc.

Timothy P. Haley  
Centennial Telecommunication  
130 N. Bond Street  
Suite 201  
Bel Air, MD 21014

Latham & Watkins  
1001 Pennsylvania Ave., NW  
Washington, DC 20004

Counsel for:  
Vanguard Cellular Systems  
Raymond B. Grochowski

Charles C. Townsend  
Atlantic Cellular Company  
15 Westminster St., Suite 830  
Providence, RI 02903

Raymond J. Stone  
American Industrial & Marine Electronics, Inc.  
P.O. Box 715  
Dover, Delaware 19901

John E. Sonneland  
Courtesy Communications  
W. 801 Fifth Ave.  
Suite 410  
Spokane, WA 99204

Michael R. Carper  
4643 South Ulster Street  
Suite 500  
Denver, CO 80237

Morrison & Foerster  
2000 Pennsylvania Ave., N.W.  
Suite 5500  
Washington, DC 20006

Industrial Telecommunications Association, Inc.  
Alliance of Private 800/900 MHZ Licenses  
Frederick J. Day, Esq.  
1110 North Glebe Road  
Suite 500  
Arlington, VA 22201-5720

Cellular Telecommunications  
Industry Association  
Michael F. Altschul  
Vice President, General Counsel  
1250 Connecticut Avenue, N.W.  
Suite 200  
Washington, DC 20036

Association of Public-Safety  
Communications Officials International, Inc.  
Wilkes, Artis, Hedrick & Lawe, Chartered  
1666 K Street, N.W.  
Suite 1100  
Washington, DC 20006

Council of Independent Communication Suppliers  
Frederick J. Day  
Mark E. Crosby  
1110 N. Glebe Road  
Suite 500  
Arlington, VA 22201-5720

Organization for the Protection and  
Advancement of Small Telephone Companies  
Lisa M. Zgina, General Counsel  
21 Dupont Circle, N.W.  
Suite 700  
Washington, DC 20036

Dru Jenkinson, Inc.  
Bessozzi, Gavin & Cravn  
1901 L Street, N.W.  
Suite 200  
Washington, DC 20036

National Telephone Cooperative Assoc.  
David Cosson  
2626 Pennsylvania Ave., N.W.  
Washington, DC 20037

Spectrum Resources, Inc.  
A.C. Miller  
307 Annandale Road  
Suite 101  
Falls Church, VA 22042

Chadmoore Communications  
Keck, Mahin & Cate  
1201 New York Avenue, N.W.  
Washington, DC 20005-3919

Palmer Communications, Inc.  
Marianne H. Lepara  
12800 University Drive  
Suite 500  
Ft. Meyers, FL 33907-5333

Total Comm, Inc.  
William C. Wyatt, President  
2701 N. Van Buren  
Enid, OK 73703

Utilities Telecommunications Council  
Jeffrey L. Sheldon, General Counsel  
1140 Connecticut Ave., N.W.  
Suite 1140  
Washington, DC 20036

U.S. Small Business Administration  
Jere W. Glover, Esq.  
409 3rd Street, S.W.  
Washington, DC 20416

Communications Unlimited, Inc.  
Lewis H. Goldman  
1850 M. Street, N.W.  
Suite 1080  
Washington, DC 20036

Nextel Communications, Inc.  
Robert S. Foosner  
800 Connecticut Avenue, N.W.  
Suite 1001  
Washington, DC 20006

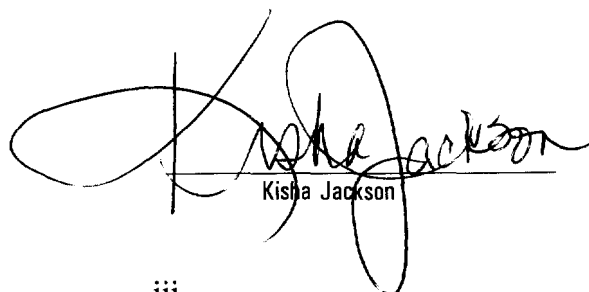
Tellicellular de Puerto Rico, Inc.  
Law Offices of Richard S. Myers  
1030 15th Street, N.W.  
Suite 906  
Washington, DC 20006

Freedom Mobile Communication, Inc.  
Jerome M. Freund, President  
14 Ray Street  
Beaver Falls, PA 15010

Delta Communications, Inc.  
Kimo C. Chun, Director  
2646 Kilihau Street  
Honolulu, HI 96819

Southwestern Bell  
Linda M. Hood  
173330 Preston Road  
Suite 100A  
Dallas, TX 75252

Associated Public Safety Communications Officer, Inc.  
Wilkes, Artis, Hedrick & Lane, Chartered  
1666 K Street, N.W.  
Washington, DC 20006



Kisha Jackson